

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company (U 39 C),

Complainant,

vs.

Calpine Corporation, CPN Pipeline Company
Calpine Energy Services, L.P., Calpine Natural
Gas Company; Lodi Gas Storage, LLC; and
DOES 1-10,

Defendants.

Case 03-07-031
(Filed July 22, 2003)**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK (TURN) FOR
SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-07-006**

This decision awards TURN \$16,073.26 in compensation for its contribution to Decision (D.) 04-07-006. This amount is \$611.25 less than TURN's claimed amount of \$16,684.51 because we have slightly reduced the claimed hourly rate for one of TURN's attorneys.

1. Background and Overview of TURN's Participation

In D.04-07-006, the Commission approved the settlement of a complaint brought by Pacific Gas and Electric Company (PG&E) against Lodi Gas Storage (Lodi) and several Calpine entities (Calpine). PG&E had alleged that Lodi was improperly offering Calpine natural gas transportation services. In the settlement, Lodi and Calpine agreed to discontinue certain services PG&E

alleged were unlawful and to pay a monetary settlement to PG&E's ratepayers and shareholders.

TURN successfully moved to intervene in the proceeding early on to safeguard the interest of ratepayers in the monetary claims PG&E was asserting against the defendants. Once it became clear that the case would settle, TURN was an active participant in the settlement process. The Commission in D.04-07-006 relied on TURN's input and support for the settlement as one basis to approve the settlement. It also changed the Administrative Law Judge's (ALJ) draft decision to incorporate comments TURN made.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The prehearing conference in this matter was held on October 16, 2003. TURN filed its timely NOI on November 6, 2003. On May 7, 2004, ALJ Thomas issued a ruling that found TURN to be a customer under the Public Utilities Code. TURN filed its request for compensation on September 13, 2004, within the required 60 days of D.04-07-006 being issued.¹ In its NOI, TURN asserted financial hardship. In her May 7, 2004 ruling, ALJ Thomas ruled that TURN met the significant financial hardship condition.

TURN has satisfied all the procedural requirements necessary to make its request for compensation.

¹ No party opposes the request.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(h) and 1802.5.) As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.²

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

² D.98-04-059, 79 CPUC2d 628, 653 (1998).

TURN claims it made a substantial contribution by having both of its recommendations adopted by the Commission in D.04-07-006. TURN states that it discussed the proposed settlement agreement in some detail with the settling parties and reviewed certain confidential materials provided in the context of the settlement negotiations. It also obtained an agreement from PG&E that PG&E would immediately provide TURN, the Commission's Office of Ratepayer Advocates (ORA) and the Commission with a copy of any notice of intended pipeline interconnection that it receives from defendants pursuant to the settlement. TURN states that it sought this agreement from PG&E to alleviate TURN's concern that PG&E might not respond to future instances of potential unauthorized bypass, as set forth in the complaint, as promptly as it did in this case. Such failure to respond might, according to TURN, leave ratepayers vulnerable to the risk of undercollection of PG&E's tariffed rates. In reliance on PG&E's agreement and as a result of its claimed independent review of the settlement agreement and supporting materials, TURN filed comments in support of the proposed settlement.

The draft decision of ALJ Thomas approved the proposed settlement, quoting TURN's comments regarding the reasonableness of the settlement. Because ALJ Thomas' draft decision did not reference the agreement with PG&E regarding notice (described in the previous paragraph), TURN filed comments on the draft decision seeking such reference. ALJ Thomas modified the decision to incorporate this portion of TURN's due diligence, and D.04-07-006 contains such reference.

In D.04-07-006, the Commission agreed with TURN's conclusions that the settlement was reasonable in light of the whole record, that PG&E's proposed

allocation of proceeds was reasonable, and that the settlement's preservation of the larger policy issues was in the public interest.

Here, TURN achieved a high level of success on the issues it raised. The Commission adopted each of its recommendations, and rejected none of TURN's input. It is thus clear that TURN made a substantial contribution to D.04-07-006.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

5. Reasonableness of Requested Compensation

TURN requests \$16,684.51 for its participation in this proceeding, as follows:

| ATTORNEYS' FEES | HOURS | HOURLY RATE | YEAR | FEES |
|---------------------------------------|--------------|------------------------|-------------|--------------------|
| Hayley Goodson | 33.75 | \$190.00 | 2003 | \$6,412.50 |
| Hayley Goodson | 22.00 | \$190.00 | 2004 | \$4,180.00 |
| Hayley Goodson (intervenor comp.) | 2.75 | \$95.00 | 2003 | \$261.25 |
| Hayley Goodson (intervenor comp.) | 8.00 | \$95.00 | 2004 | \$760.00 |
| Subtotal | | | | \$11,613.75 |
| Marcel Hawiger | 2.75 | \$250.00 | 2003 | \$687.50 |
| Marcel Hawiger (intervenor comp.) | 0.75 | \$250.00 | 2004 | \$187.50 |
| Subtotal | | | | \$875.00 |
| Robert Finkelstein | 0.50 | \$365.00 | 2003 | \$182.50 |
| Robert Finkelstein | 1.00 | \$365.00 | 2004 | \$365.00 |
| Robert Finkelstein (intervenor comp.) | 0.25 | \$182.50 | 2003 | \$45.63 |
| Subtotal | | | | \$593.13 |
| Michel Florio | 7.00 | \$435.00 | 2004 | \$3,045.00 |
| Subtotal | | | | \$3,045.00 |
| ATTORNEYS' FEES Subtotal | | | | \$16,126.88 |
| OTHER REASONABLE COSTS | | | | |
| Photocopying Expenses | | | | \$499.60 |
| Postage Costs | | | | \$44.28 |
| Miscellaneous Expense (parking) | | | | \$13.75 |
| Subtotal | | | | \$557.63 |

TOTAL REQUEST**\$16,684.51**

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

TURN claims that its work was productive in this proceeding because it assisted the Commission in establishing the reasonableness of the proposed settlement and provided core gas ratepayers with protection against future rate increases resulting from unauthorized bypass of PG&E's system and tariffs. The settlement also provided for a lump sum payment to PG&E, with \$81,372 going to core customers and \$176,081 going to noncore customers. While TURN notes that the vast majority of the \$2.7 million settlement proceeds went to PG&E's shareholders (who were at risk for gas transmission revenue recovery during the period of time covered by the settlement due to PG&E's current ratemaking set-up), TURN also states that these ratemaking practices could change in the future. "If that were the case, PG&E's incentive to act promptly in the event of potential unauthorized bypass would decline. . . . TURN's agreement with PG&E regarding notice of defendants' plans regarding interconnection,

referenced in D.04-07-006, will mitigate the risk that core ratepayers will face rate increases resulting from unauthorized bypass in the future.”³ Based on the foregoing, we agree that TURN’s input was productive.

Next, we must assess whether the hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions are reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.⁴ Since we found that TURN’s efforts made a substantial contribution to the delineated decisions, we need not exclude from TURN’s award compensation for certain issues. However, we note that TURN broke down its efforts by issue; had we needed to eliminate certain issues from the award, this breakdown would have facilitated the process.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. For work in 2003 by Marcel Hawiger (Hawiger), Robert Finkelstein (Finkelstein) and Michel Florio (Florio), TURN seeks hourly rates that the Commission has already approved.⁵ TURN seeks those same rates for these attorneys for their work in 2004, without prejudice to its right to seek higher rates for them for 2004 work in

³ *TURN Request for Compensation* at 7.

⁴ TURN separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

⁵ *See* D.04-05-048 (approving requested rate for 2003 of \$250 for Hawiger); D.03-08-041 (approving requested rate for 2003 of \$365 for Finkelstein); and D.04-02-017 (approving requested rate for 2003 of \$435 for Florio).

other requests for compensation. We find that the rates requested for 2003 and 2004 for Hawiger (\$250), Finkelstein (\$365) and Florio (\$435) are reasonable, without prejudice to TURN's right to seeking higher 2004 hourly rates in other proceedings.

For Hayley Goodson (Goodson), TURN seeks \$190 per hour for work in 2003 and 2004. This is the same rate TURN sought for Goodson in R.01-08-028. Because a decision on that request has not been adopted as of this writing, we recite TURN's R.01-08-028 assertions, and adopt a rate here. Goodson is a 2003 graduate of the University of California, Berkeley's Boalt Hall School of Law and a 1996 graduate of Brown University. Goodson joined TURN's staff as a legal assistant in 1998 and worked for TURN as a summer law clerk between her second and third years of law school. She joined TURN's attorney staff in 2003. In D.03-10-080, we awarded Goodson \$80 per hour for her work as a paralegal in 1999 and 2000, and in D.03-05-065 and D.04-05-048 we awarded \$95 per hour for work in 2002.

TURN claims \$190/hour is reasonable based on comparable market rates for new law school graduates. TURN notes that "[i]n recent compensation decisions, the Commission has adopted hourly rates of \$165 to \$175 for work performed in 2001 by attorneys who appear to have graduated from law school in the prior year [citing D.02-05-005, *mimeo.*, pp. 9-10; D.03-01-075, *mimeo.*, p. 10]. Increasing these rates by 7.5% per year yields a 2003 of \$190-202 per hour."⁶ TURN explains that a 7.5% per year increase is justified because a survey of

⁶ TURN Request at 20.

attorney hourly rates, the Of Counsel survey, reflects average low-end associate attorney hourly rate increases of 16.5% from 2002 to 2003.⁷

The Of Counsel survey TURN relies on shows that rates for junior associate attorneys in San Francisco in 2000-01 ranged from \$110 per hour (Lillick & Charles) to \$200 per hour (Townsend and Townsend). Unfortunately, the survey only lists these two San Francisco firms. Other firms in the San Francisco Bay Area show rates for 2002-03 for junior associates ranging from \$170 (Fenwick & West – Palo Alto), to \$190 (Cooley Godward – Palo Alto) to \$195 (Gray Cary Ware – Palo Alto).

In D.03-01-075, we awarded \$190/hour to Shawna Parks for work in 2001. Parks had two years of experience at the time, in contrast to Goodson, who was in her first year of practice in late 2003 and 2004, when she billed the hours at issue here. In D.02-09-040, we awarded TURN's attorney Marcel Hawiger \$190 per hour for work he performed in 2001. Hawiger joined TURN in August 1998 and obtained his law degree from New York University School of Law in 1993. He has bachelor's and master's degrees in geology and environmental engineering, and has worked on energy-related cases at the Commission, focusing on issues related to natural gas and demand side management. At the time we issued D.02-09-040, Hawiger had been TURN's lead attorney on two Biennial Cost Allocation Proceedings, the Gas Industry Restructuring Proceeding, the Interruptible Rulemaking, and several energy efficiency proceedings.

⁷ *Id.* at 22.

On the basis of the foregoing information, we find the hourly rate TURN claims for Goodson to be too high. It is at the high end of the range for private firms in San Francisco and Palo Alto, and is the same as the rate we awarded both Parks and Hawiger, who each had more experience at the time they put in their efforts. While our awards to Parks and Hawiger were for work performed prior to 2003-04, we find that a fairer hourly rate for Goodson for 2003 and 2004 is \$180 and award her that rate for her work on this case.

The itemized direct expenses submitted by TURN include costs for travel, photocopying, and postage and total \$557.63. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

6. Awards

As set forth in the table below, we award TURN \$ 16,073.26.

| ATTORNEYS' FEES | HOURS | HOURLY RATE | YEAR | FEES |
|---------------------------------|--------------|------------------------|-------------|--------------------|
| Hayley Goodson | 33.75 | \$180.00 | 2003 | \$6,075.00 |
| Hayley Goodson | 22.00 | \$180.00 | 2004 | \$3,960.00 |
| Hayley Goodson | 2.75 | \$90.00 | 2003 | \$247.50 |
| Hayley Goodson | 8.00 | \$90.00 | 2004 | \$720.00 |
| Subtotal | | | | \$11,002.50 |
| Marcel Hawiger | 2.75 | \$250.00 | 2003 | \$687.50 |
| Marcel Hawiger | 0.75 | \$250.00 | 2004 | \$187.50 |
| Subtotal | | | | \$875.00 |
| Robert Finkelstein | 0.50 | \$365.00 | 2003 | \$182.50 |
| Robert Finkelstein | 1.00 | \$365.00 | 2004 | \$365.00 |
| Robert Finkelstein | 0.25 | \$182.50 | 2003 | \$45.63 |
| Subtotal | | | | \$593.13 |
| Michel Florio | 7.00 | \$435.00 | 2004 | \$3,045.00 |
| Subtotal | | | | \$3,045.00 |
| ATTORNEYS' FEES Subtotal | | | | \$15,515.63 |

OTHER REASONABLE COSTS

| | |
|-----------------------|-----------------|
| Photocopying Expenses | \$499.60 |
| Postage Costs | \$44.28 |
| Miscellaneous Expense | \$13.75 |
| Subtotal | \$557.63 |

TOTAL REQUEST **\$16,073.26**

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made. The award is to be paid by PG&E as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.04-07-006 as described herein.

2. TURN requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

3. The total of the reasonable compensation is \$16,073.26.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.04-07-006.

2. TURN should be awarded \$16,073.26 for its contribution to D.04-07-006.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$16,073.26 as compensation for its substantial contributions to Decision 04-07-006.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning November 29, 2004, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

| | |
|----------------------------------|----------------------------------|
| Compensation Decision: | |
| Contribution Decision(s): | D0407006 |
| Proceeding(s): | C0307031 |
| Author: | ALJ Thomas |
| Payer(s): | Pacific Gas and Electric Company |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|----------------------------|-------------------|-------------------------|-----------------------|--------------------|-----------------------------------|
| The Utility Reform Network | 9/13/04 | \$16,684.51 | 16,073.26 | No | failure to justify hourly rate |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|----------------------------|-----------------------------|----------------------------------|---------------------------|
| Hayley | Goodson | Attorney | The Utility Reform Network | \$190 | 2003 | \$180 |
| Hayley | Goodson | Attorney | The Utility Reform Network | \$190 | 2004 | \$180 |
| Marcel | Hawiger | Attorney | The Utility Reform Network | \$250 | 2003 | \$250 |
| Marcel | Hawiger | Attorney | The Utility Reform Network | \$250 | 2004 | \$250 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$365 | 2003 | \$365 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$365 | 2004 | \$365 |
| Michel | Florio | Attorney | The Utility Reform Network | \$435 | 2003 | \$435 |
| Michel | Florio | Attorney | The Utility Reform Network | \$435 | 2004 | \$435 |